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Justice Week: Mediation Deserves Consideration in Legal Education – Part Two

- **Catherine Shephard considers the opportunity for university law clinics to fill the mediation skills gap**

In the first part of this article, Catherine Shephard, Senior Lecturer in Law, identified a need for the legal profession to do more to promote mediation, and championed the education of student lawyers in mediation skills as a key step to achieve this.

Catherine explored one mid-to-long term solution to achieve this, by encouraging those with responsibility for the design of postgraduate professional and undergraduate legal education programmes to change the curricula, to include more of the skills used in non-contentious work, particularly negotiation and mediation.

In the following article, Catherine argues that there are more immediate steps law schools could take. Here she explains how experiential learning of mediation, through university law clinics, can offer a valuable opportunity to fill the non-contentious skills gap in the short-term and beyond.

Experiential learning

Experiential learning provides a valuable opportunity for students to integrate all that they have learned across their legal education. The thorny issue of barriers to accessing justice will reveal itself during this experience, where students meet real clients.

It is in line with the current proposals for change in legal education put forward by the Solicitors Regulatory Authority, and there are some excellent examples of clinical legal education in the UK.

In terms of dispute resolution however, with some notable exceptions, clinics tend to dismantle the barriers to justice by providing free legal advice. There is an alternative, which is to provide students the opportunity, within the clinical legal education setting, to complement their legal knowledge and skills with a sustainable practice of mediation and negotiation.

The key message here is that employing mediation in law clinics has significant potential to illuminate for students the real barriers clients experience in accessing justice, particularly in terms of cost and time.. It also equips those students with additional skills to help such clients resolve disputes through alternative means, which, crucially, they could continue to practice when they leave university.

The benefits

The current default position in experiential learning, to deliver litigation advice for free, has disadvantages. Early reflection on how the cost of instructing a legal professional is itself a barrier to accessing justice can, naturally, feel demotivating to students who are working hard to achieve this very status.

Students choose law based on several factors, however a perennial is the desire to be involved in social justice, 'to help people'. Why would law schools want to be the first to disabuse them of this ideal? Universities are keen to promote awareness of social justice and produce graduates who are capable of responsible and ethical practice. How does this fit with the message that by putting a monetary value on their work, they impede access to justice?

A greater awareness and appreciation of mediation would complement, not replace, a graduate's ability to feel pride in their professional identity, and increase their self-worth. This is timely when the reputation of lawyers, and their ability to listen and demonstrate emotional intelligence, is at an all-time low, and wellbeing is the word of the day.

The clients, of course, would receive the opportunity of a practical and swift solution to their problem. However, employing mediation in law clinics brings some distinct advantages for students too. An entire mediation can be timetabled into one day. Students can experience satisfaction in having engaged in the entire process, and have the opportunity to employ reflective practice for future improvement.

Our lawyers of the future would have real experience and insight in how mediation compares and contrasts to litigation; the difference between settlement and justice. Mediation offers the benefits of client contact, in a non-adversarial setting, without the pressure to apply the law. Students will gain experience in dealing with ethical issues; client confidentiality in particular. They will be exposed to the idea of fair process.

Radical ideas

Given the relatively low costs of mediation, there is scope to consider more radical ideas. This could include training students to qualification as mediators and charging any client who can afford it, to fund the training while swelling the clinic coffers to help those clients whose legal issues do need to go to court and who require further funding.

A mediation qualification can be achieved in one week; Manchester Metropolitan University already offers mediation training to students on its Bar Professional Training Course; it does not require them to practice it during the year. What if it did? What if all law graduates were also qualified in mediation? These are significant and exciting questions to consider in light of Lord Neuberger's comments (outlined in Part One of this article) and the overreaching aim of engaging the legal profession in promoting mediation.

Allowing students to experience mediation is not, of course, without its disadvantages. Good supervision is key, and clinics would need to train staff in mediation skills and as mediators.

There are very important risk factors faced by any mediator in family matters, such as identifying inequality of power and the scope for abuse, that are likely to be too challenging for students at this stage.

In a further publication, the idea of confining any such experimental work with student mediators to civil and commercial matters will be considered. For other matters, observation of mediation by clinic staff has potential to retain many of the benefits outlined above, while fencing the risk.